

the uppermost layer in said stack of layers including a top surface on which the exercising and sports conditioning is performed, said top surface being comprised of a material that facilitates exercises including the actions of pivoting, jumping, sliding and running,

an intermediate layer comprised of material that will absorb the impact of a jump and thereby minimize the likelihood of injury,

said exercising and sports conditioning being performed on said top surface, and

[a plurality of means] indicia on said top surface[, said means] for defining a plurality of locations for foot placement before and after jumping routines in exercising and sport conditioning, and

a bottom layer, said bottom layer having a bottom surface that resists sliding on the surface which supports said mat so that said mat will not slide from under an exerciser who will otherwise fall and risk serious injury, said bottom layer being substantially the same size as said intermediate layer and being connected to said intermediate layer by a hot melt adhesive.

REMARKS

Claims 1, 3-6, 26-35 and 36-44 remain in this case.

Attached is a PTO/SB/08A and the patents listed on it.

Attached are three sheet comprising formal drawings for this patent application. It is requested that they be entered in lieu of the informal sketches presently on file.

Applicant's attorney gratefully acknowledges the interview granted by Examiner Amerson on September 5, 2002.

At that time, the nature of the final rejection, the claims and the references were discussed in substantial detail.

Claims 36 and 37 had been rejected under 35 U.S.C. § 112 as being indefinite because of allegedly using the a "means clause. However, to the extent that these claims were indefinite, the alleged indefiniteness has been cured by the proposed amendment. Accordingly, the rejection should be withdrawn.

To the extent that the § 112 rejection of dependent claims 38-44 is based on the § 112 rejection of their parent claim, the rejection should be withdrawn.

The rejection of claims 1-44 and in particular claims 1, 36 and 37 under 35 U.S.C. § 112 as allegedly reciting printed matter is noted.

This rejection was specifically discussed during the interview. At that time it was pointed out to the Examiner that

the limitations were entirely proper and that there is no "lock-step" rule in this regard. Thus the nature of the indicia comprising the claimed invention needs to be considered, as well as their manner of use.

Thus, it was pointed out to the Examiner that the indicia served exactly the same function as structure and thus should be considered to be patentable subject matter just as structure would be.

In fact the Office has consistently maintained this distinction. In support of this view the patents listed on the PTO/SB/08A were called to the attention of the examiner.

All of the patents listed on the PTO/SB/08A have claims which recite lines on surfaces and their positions relative to other lines on the surfaces.

During the interview the Examiner agreed that if the term "elements" in claims 1 and 37 were changed to --indicia-- it would more clearly establish that the claims do not recite printed matter.

Accordingly, claims 1. and 37 have been so amended and it is requested that the rejection be withdrawn.

Claims 1-44 were rejected under 35 U.S.C. §112 as being indefinite since claims 1, 36 and 37 recited limitations which are characterized as "printed matter."

In view of the fact that these claims have been amended this rejection should be withdrawn.

Claims 1, 3-6, and 36-42 and 44 were rejected under 35 U.S.C. §103(a) as unpatentable over Baldwin in view of Casteel.

It is submitted that these claims, now having been amended in accordance with the understanding reached at the interview are now allowable.

In particular, it is clear that the mat disclosed in Baldwin only has two layers. However, the Examiner characterized the inwardly projecting flange 20 in Baldwin as arguably being a third layer.

Thus, claims 1 and 37 have been amended to more clearly recite the relationship between the third layer and the intermediate layer. Thus, the claim now recites that the third layer and the intermediate layer are of substantially the same size and that they are connected to each other by a hot-melt adhesive.

These limitations are not disclosed in Baldwin since it is clear that the "third layer" is merely an inwardly directed

flange on frame 11 which only engages the periphery of the layer 13. Further, the various layers in Baldwin held in engagement with each other by straps 27 which are connected to notches in the frame 11, rather than being connected by a hot-melt adhesive.

The defects in the disclosure in Baldwin are not cured by referring too the disclosure in the Casteel.

Thus, Casteel fails to disclose an exercise mat. It merely discloses a device comprising two layers that is used for parlor games such as hopscotch. The device is particularly designed for use by sight-impaired, blind, young and/or relatively uncoordinated individuals.

The designs on portions of the surface of Casteel's device are made of different textures than the other portions of the surface so that they are more readily discernible by the persons using the device.

It is significant that an application of Casteel's teachings to Baldwin would interfere with the requirements would prevent Baldwin from being used for its intended purpose, i.e., a relatively smooth surface for exercising.

Similarly, the upper surface of the mat described and claimed by applicant is required, inter alia, to permit sliding movement across the surface.

Accordingly, the combination of Baldwin and Casteel would be improper because it would destroy the function of Baldwin. Further, it would still fail to meet the limitations recited in the claims for then reasons given.

Therefore, the rejection of claims 1 and 37 as being unpatentable over Baldwin in view of Casteel should be withdrawn.

Reconsideration of claims 3-6, 26-35.

These claims are considered to be patentable for substantially the same reasons as claims 1 and 37 and further, because none of the references, whether taken individually or in combination, disclose or suggest the structure that they recite.

The dimensions and the materials that are recited in the claims are of special and are considered to be critical to the patentability of these claims. Thus, applicant has carefully researched a vast array of possible materials that could be used for the various structural elements, keeping in mind the critical importance in preventing injury to exercisers while at the same time permitting movements necessary for exercise and sports conditioning.

These features are not disclosed in any of the cited references.

Accordingly, the rejection of claims 3-6 and 26-35 should be withdrawn.

Reconsideration of claims 38-44 is requested. These claims are considered to be patentable for substantially the same reasons as claims 3-6, and 26-35 as given above.

Accordingly, the rejection of claims 38-44 should be withdrawn.

Reconsideration of claim 36 is requested. This claim had been rejected under 35 U.S.C. § 103 over Baldwin in view of Casteel as applied to claims 1, 6, 7, 9, 11 and 12-16.

Claim 36 was discussed extensively at the interview. It was pointed out that the structure recited in this claim is not shown in the prior art.

Further, describing the two mats as mere duplication is a mischaracterization of the claim. The mats are not the same. Further they are not arranged as though they are the same.

Rather, the two mats are constructed differently and arranged relative to each other to provide a unitary teaching device which enables student and instructor to face each other during exercise routines so that the students body and leg movements can be coordinated with those of the instructor.

Thus, it the claim recites that the mats are so arranged so that the front ends of each mat are facing each other, and rear ends of each mat are facing away from each other, so that exercisers can face each other and match their foot movements while exercising.

This feature is not shown or disclosed in any of the references cited. Further, as explained earlier, this is not arbitrary nor repetitive.

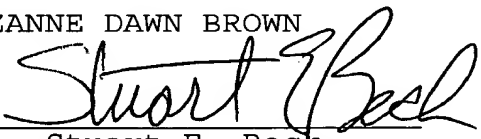
Accordingly, the rejection of claim 36 should be withdrawn.

In view of the amendments authorized and the arguments presented, it is submitted that all the claims are allowable without further search, and this case should be passed to issue.

Respectfully submitted,

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